

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Xinsheng Sean Ling Confirmation No.: 7079
Application No.: 10/788,539 Art Unit: 1634
Filed: February 27, 2004 Examiner: Narayan Kameshwar Bhat
Title: ADDRESSABLE NANOPORES AND MICROPOROS INCLUDING METHODS FOR MAKING AND USING SAME

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT AND REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§ 1.702-1.705

Dear Madam:

The Notice of Allowance mailed on September 10, 2009 for the application referenced above recites a 787 day patent term adjustment. Applicants believe that the application is entitled to more than 787 days of term adjustment, and hereby request reconsideration of the patent term adjustment as follows.

Applicants believe the total patent term adjustment under 37 C.F.R. §§ 1.702-1.704 should be the total of:

(1a) 938 days under 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1), for the Patent Office delay in issuing a first office action after April 27, 2005 (14 months from the filing date) until November 21, 2007 (date the first office action was mailed); and

(1b) 3 days under 37 C.F.R. §§ 1.702(a)(3) and 1.703(a)(3) for Patent Office delay after June 21, 2008 until June 24, 2008 for delay in issuing a response to Applicant's response to the Restriction Requirement filed February 21, 2008; and

(2) the total number of days (1,017 days as of December 10, 2009) under 37 C.F.R. §§ 1.702(b) and 1.703(b) for the Patent Office delay in issuing the patent after February 27, 2007 (three years from the filing date) until the actual issue date of the patent (to be determined); and

(3) less 154 days of Applicant delay under 37 C.F.R. § 1.704(b).

The periods 1a-2 overlap by 270 days under 37 C.F.R. § 1.703(f). *See Wyeth v. Dudas*, 88 U.S.P.Q.2d 1538 (D.D.C. 2008). Thus, as of December 10, 2009, the total adjustment based on (1) and (2) above would be 747 days, but this is subject to recalculation depending on the actual issue date of the patent.

The additional days of patent term adjustment are requested under 37 C.F.R. §§ 1.702(b) and 1.703(b) for the following reason.

37 C.F.R. 1.702(b) states:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a)

The instant application was filed under 35 U.S.C. § 111(a) on February 27, 2004 and therefore should have issued by February 27, 2007.

37 C.F.R. § 1.703 states in pertinent part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the

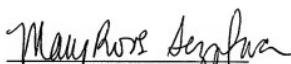
date on which the application was filed under 35 U.S.C. 111(a) ... and ending *on the date a patent was issued* (emphasis added)

Therefore, the relevant period of delay in issuing the patent began on February 28, 2007 and, as of December 10, 2009, our calculations show that the application should receive an additional 747 day term adjustment, for a total of 1,534 days. Applicants do not know when the application will issue, and therefore respectfully request that the exact term adjustment be recalculated upon issuance.

In accordance with 37 C.F.R. 1.18(e), the \$200.00 fee is enclosed herewith. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 08-0219, under Order No. 12136.131US1.

Respectfully submitted,

Dated: *December 10, 2009*


Mary Rose Scozafava
Registration No.: 36,268
Attorney for Applicant(s)

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6000 (telephone)
(617) 526-5000 (facsimile)